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A CHARTER OF DEMOCRACY

ADDRESS

BY

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EX-PRESIDENT OF THE UNITED STATES

BEFORE THE

OHIO CONSTITUTIONAL CONVENTION

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A CHARTER OF DEMOCRACY.

By Theodore Roosevelt.

Mr. President, and members of the Ohio constitutional convention: I am profoundly sensible of the honor you have done me in asking me to address you. You are engaged in the fundamental work of self-government; you are engaged in framing a constitution under and in accordance with which the people are to get and to do justice and absolutely to rule themselves. No representative body can have a higher task. To carry it through successfully there is need to combine practical common sense of the most hard-headed kind with a spirit of lofty idealism. Without idealism your work will be but a sordid makeshift; and without the hard-headed common sense the idealism will be either wasted or worse than wasted.

I shall not try to speak to you of matters of detail. Each of our Commonwealths has its own local needs, local customs, and habits of thought, different from those of other Commonwealths; and each must therefore apply in its own fashion the great principles of our political life. But these principles themselves are in their essence applicable everywhere, and of some of them I shall speak to you. I can not touch upon them all; the subject is too vast and the time too limited; if any one of you cares to know my views of these matters which I do not to-day discuss, I will gladly send him a copy of the speeches I made in 1910, which I think cover most of the ground.

I believe in pure democracy. With Lincoln, I hold that "this country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it." We progressives believe that the people have the right, the power, and the duty to protect themselves and their own welfare; that human rights are supreme over all other rights; that wealth should be the servant, not the master, of the people. We believe that unless representative government does absolutely represent the people it is not representative government at all. We test the worth of all men and all measures by asking how they contribute to the welfare of the men, women, and children of whom this Nation is composed. We are engaged in one of the great battles of the age-long contest waged against privilege on behalf of the common welfare. We hold it a prime duty of the people to free our Government from the control of money in politics. For this purpose we advocate, not as ends in themselves, but as weapons in the hands of the people, all governmental devices which will make the representatives of the people more easily and certainly responsible to the people's will.

This country, as Lincoln said, belongs to the people. So do the natural resources which make it rich. They supply the basis of our

prosperity now and hereafter. In preserving them, which is a national duty, we must not forget that monopoly is based on the control of natural resources and natural advantages, and that it will help the people little to conserve our natural wealth unless the benefits which it can yield are secured to the people. Let us remember, also, that conservation does not stop with the natural resources, but that the principle of making the best use of all we have requires with equal or greater insistence that we shall stop the waste of human life in industry and prevent the waste of human welfare which flows from the unfair use of concentrated power and wealth in the hands of men whose eagerness for profit blinds them to the cost of what they do. We have no higher duty than to promote the efficiency of the individual. There is no surer road to the efficiency of the Nation.

I am emphatically a believer in constitutionalism, and because of this fact I no less emphatically protest against any theory that would make of the Constitution a means of thwarting instead of securing the absolute right of the people to rule themselves and to provide for their own social and industrial well being. All constitutions, those of the States no less that that of the Nation, are designed, and must be interpreted and administered, so as to fit human rights. Lincoln so interpreted and administered the National Constitution. Buchanan attempted the reverse, attempted to fit human rights to, and limit them by, the Constitution. It was Buchanan who treated the courts as a fetish, who protested against and condemned all criticism of the judges for unjust and unrighteous decisions, and upheld the Constitution as an instrument for the protection of privilege and of vested wrong. It was Lincoln who appealed to the people against the judges when the judges went wrong, who advocated and secured what was practically the recall of the Dred Scott decision, and who treated the Constitution as a living force for righteousness. We stand for applying the Constitution to the issues of to-day as Lincoln applied it to the issues of his day; Lincoln, mind you, and not Buchanan, was the real upholder and preserver of the Constitution, for the true progressive, the progressive of the Lincoln stamp, is the only true constitutionalist, the only real conservative. The object of every American constitution worth calling such must be what it is set forth to be in the preamble to the National Constitution, "to establish justice;" that is, to secure justice as between man and man by means of genuine popular self-government. If the Constitution is successfully invoked to nullify the effort to remedy injustice, it is proof positive either that the Constitution needs immediate amendment or else that it is being wrongfully and improperly construed. I therefore very earnestly ask you clearly to provide in this constitution means which will enable the people readily to amend it if at any point it works injustice, and also means which will permit the people themselves by popular vote, after due deliberation and discussion, but finally and without appeal, to settle what the proper construction of any constitutional point is. It is often said that ours is a government of checks and balances. But this should only mean that these checks and balances obtain as among the several different kinds of representatives of the people—judicial, executive, and legislative—to whom the people have delegated certain portions of their power. It does not mean that the people have parted with their power or can not resume it. The "division of powers" is merely the division

among the representatives of the powers delegated to them: the term must not be held to mean that the people have divided their power with their delegates. The power is the people's, and only the people's. It is right and proper that provision should be made rendering it necessary for the people to take ample time to make up their minds on any point; but there should also be complete provision to have their decision put into immediate and living effect when it has thus been deliberately and definitely reached.

I hold it to be the duty of every public servant, and of every man who in public or in private life holds a position of leadership in thought or action, to endeavor honestly and fearlessly to guide his fellow-countrymen to right decisions; but I emphatically dissent from the view that it is either wise or necessary to try to devise methods which under the Constitution will automatically prevent the people from deciding for themselves what governmental action they deem just and proper. It is impossible to invent constitutional devices which will prevent the popular will from being effective for wrong without also preventing it from being effective for right. The only safe course to follow in this great American democracy is to provide for making the popular judgment really effective. When this is done, then it is our duty to see that the people, having the full power, realize their heavy responsibility for exercising that power aright. But it is a false constitutionalism, a false statesmanship, to endeavor by the exercise of a perverted ingenuity to seem to give the people full power and at the same time to trick them out of it. Yet this is precisely what is done in every case where the State permits its representatives, whether on the bench or in the legislature or in executive office, to declare that it has not the power to right grave social wrongs, or that any of the officers created by the people, and rightfully the servants of the people, can set themselves up to be the masters of the people. Constitution makers should make it clear beyond shadow of doubt that the people in their legislative capacity have the power to enact into law any measure they deem necessary for the betterment of social and industrial conditions. The wisdom of framing any particular law of this kind is a proper subject of debate; but the power of the people to enact the law should not be subject to debate. To hold the contrary view is to be false to the cause of the people, to the cause of American democracy.

Lincoln, with his clear vision, his ingrained sense of justice, and his spirit of kindly friendliness to all, forecast our present struggle and saw the way out. What he said should be pondered by capitalist and workingman alike. He spoke as follows (I condense):

> I hold that while man exists it is his duty to improve not only his condition but to assist in ameliorating mankind. Labor is prior to and independent of capital. Labor is the superior of capital, and deserves much the higher consideration. Capital has it rights, which are as worthy of protection as any other rights. Nor should this lead to a war upon property. Property is the fruit of labor. Property is desirable, is a positive good in the world. Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that his own shall be safe from violence when built.

This last sentence characteristically shows Lincoln's homely, kindly common sense. His is the attitude that we ought to take. He showed the proper sense of proportion in his relative estimates of capital and labor, of human rights and the rights of wealth. Above

all, in what he thus said, as on so many other occasions, he taught the indispensable lesson of the need of wise kindliness and charity, of sanity and moderation, in the dealings of men one with another.

We should discriminate between two purposes we have in view. The first is the effort to provide what are themselves the ends of good government; the second is the effort to provide proper machinery for the achievement of these ends.

The ends of good government in our democracy are to secure by genuine popular rule a high average of moral and material well-being among our citizens. It has been well said that in the past we have paid attention only to the accumulation of prosperity, and that from henceforth we must pay equal attention to the proper distribution of prosperity. This is true. The only prosperity worth having is that which affects the mass of the people. We are bound to strive for the fair distribution of prosperity. But it behooves us to remember that there is no use in devising methods for the proper distribution of prosperity unless the prosperity is there to distribute. I hold it to be our duty to see that the wageworker, the small producer, the ordinary consumer, shall get their fair share of the benefit of business prosperity. But it either is or ought to be evident to everyone that business has to proper before anybody can get any benefit from it. Therefore I hold that he is the real progressive, that he is the genuine champion of the people, who endeavors to shape the policy alike of the Nation and of the several States so as to encourage legitimate and honest business at the same time that he wars against all crookedness and injustice and unfairness and tyranny in the business world (for of course we can only get business put on a basis of permanent prosperity when the element of injustice is taken out of it). This is the reason why I have for so many years insisted, as regards our National Government, that it is both futile and mischievous to endeavor to correct the evils of big business by an attempt to restore business conditions as they were in the middle of the last century, before railways and telegraphs had rendered larger business organizations both inevitable and desirable. The effort to restore such conditions, and to trust for justice solely to such proposed restoration, is as foolish as if we should attempt to arm our troops with the flintlocks of Washington's Continentals instead of with modern weapons of precision. Flintlock legislation, of the kind that seeks to prohibit all combinations, good or bad, is bound to fail, and the effort, in so far as it accomplishes anything at all, merely means that some of the worst combinations are not checked, and that honest business is checked.

What is needed is, first, the recognition that modern business conditions have come to stay, in so far at least as these conditions mean that business must be done in larger units, and then the cool-headed and resolute determination to introduce an effective method of regulating big corporations so as to help legitimate business as an incident to thoroughly and completely safeguard the interests of the people as a whole. We are a business people. The tillers of the soil, the wageworkers, the business men—these are the three big and vitally important divisions of our population. The welfare of each division is vitally necessary to the welfare of the people as a whole. The great mass of business is of course done by men whose

business is either small or of moderate size. The middle-sized business men form an element of strength which is of literally incalculable value to the Nation. Taken as a class, they are among our best citizens. They have not been seekers after enormous fortunes; they have been moderately and justly prosperous, by reason of dealing fairly with their customers, competitors, and employees. They are satisfied with a legitimate profit that will pay their expenses of living and lay by something for those who come after, and the additional amount necessary for the betterment and improvement of their plant. The average business man of this type is, as a rule, a leading citizen of his community, foremost in everything that tells for its betterment, a man whom his neighbors look up to and respect; he is in no sense dangerous to his community, just because he is an integral part of his community, bone of its bone and flesh of its flesh. His life fibers are intertwined with the life fibers of his fellow citizens. Yet nowadays many men of this kind, when they come to make necessary trade agreements with one another, find themselves in danger of becoming unwitting transgressors of the law, and are at a loss to know what the law forbids and what it permits. This is all wrong. There should be a fixed governmental policy, a policy which shall clearly define and punish wrongdoing, and shall give in advance full information to any man as to just what he can and just what he can not legally and properly do. It is absurd and wicked to treat the deliberate lawbreaker as on an exact par with the man eager to obey the law, whose only desire is to find out from some competent governmental authority what the law is and then live up to it. It is absurd to endeavor to regulate business in the interest of the public by means of long-drawn lawsuits without any accompaniment of administrative control and regulation, and without any attempt to discriminate between the honest man who has succeeded in business because of rendering a service to the public and the dishonest man who has succeeded in business by cheating the public.

So much for the small business man and the middle-sized business man. Now for big business. It is imperative to exercise over big business a control and supervision which is unnecessary as regards small business. All business must be conducted under the law, and all business men, big or little, must act justly. But a wicked big interest is necessarily more dangerous to the community than a wicked little interest. "Big business" in the past has been responsible for much of the special privilege which must be unsparingly cut out of our national life. I do not believe in making mere size of and by itself criminal. The mere fact of size, however, does unquestionably carry the potentiality of such grave wrongdoing that there should be by law provision made for the strict supervision and regulation of these great industrial concerns doing an interstate business, much as we now regulate the transportation agencies which are engaged in interstate business. The antitrust law does good in so far as it can be invoked against combinations which really are monopolies or which restrict production or which artificially raise prices. But in so far as its workings are uncertain, or as it threatens corporations which have not been guilty of antisocial conduct, it does harm. Moreover, it can not by itself accomplish more than a trifling part of the governmental regulation of big business which is needed. The Nation and the States must cooperate in this matter. Among the

States that have entered this field Wisconsin has taken a leading place. Following Senator La Follette, a number of practical workers and thinkers in Wisconsin have turned that State into an experimental laboratory of wise governmental action in aid of social and industrial justice. They have initiated the kind of progressive government which means not merely the preservation of true democracy, but the extension of the principle of true democracy into industrialism as well as into politics. One prime reason why the State has been so successful in this policy lies in the fact that it has done justice to corporations precisely as it has exacted justice from them. Its public utilities commission in a recent report answered certain critics as follows:

> To be generous to the people of the State at the expense of justice to the carriers would be a species of official brigandage that ought to hold the perpetrators up to the execration of all honest men. Indeed, we have no idea that the people of Wisconsin have the remotest desire to deprive the railroads of the State of aught that, in equality and good conscience, belongs to them, and if any of them have, their wishes can not be gratified by this commission.

This is precisely the attitude we should take toward big business. It is the practical application of the principle of the square deal. Not only as a matter of justice, but in our own interest, we should scrupulously respect the rights of honest and decent business and should encourage it where its activities make, as they do make, for the common good. It is for the advantage of all of us when business prospers. It is for the advantage of all of us to have the United States become the leading nation in international trade, and we should not deprive this Nation, we should not deprive this people, of the instruments best adapted to secure such international commercial supremacy. In other words, our demand is that big business give the people a square deal and that the people give a square deal to any man engaged in big business who honestly endeavors to do what is right and proper.

On the other hand, any corporation, big or little, which has gained its position by unfair methods and by interference with the rights of others, which has raised prices or limited output in improper fashion and been guilty of demoralizing and corrupt practices, should not only be broken up, but it should be made the business of some competent governmental body by constant supervision to see that it does not come together again, save under such strict control as to insure the community against all danger of a repetition of the bad conduct. The chief trouble with big business has arisen from the fact that big business has so often refused to abide by the principle of the square deal; the opposition which I personally have encountered from big business has in every case arisen not because I did not give a square deal but because I did.

All business into which the element of monopoly in any way or degree enters, and where it proves in practice impossible totally to eliminate this element of monopoly, should be carefully supervised, regulated, and controlled by governmental authority; and such control should be exercised by administrative, rather than by judicial officers. No effort should be made to destroy a big corporation merely because it is big, merely because it has shown itself a peculiarly efficient business instrument. But we should not fear, if necessary, to bring the regulation of big corporations to the point of controlling conditions so that the wageworker shall have a wage more than sufficient

to cover the bare cost of living, and hours of labor not so excessive as to wreck his strength by the strain of unending toil and leave him unfit to do his duty as a good citizen in the community. Where regulation by competition (which is, of course, preferable) proves insufficient, we should not shrink from bringing governmental regulation to the point of control of monopoly prices, if it should ever become necessary to do so, just as in exceptional cases railway rates are now regulated.

In emphasizing the part of the administrative department in regulating combinations and checking absolute monopoly, I do not, of course, overlook the obvious fact that the legislature and the judiciary must do their part. The legislature should make it more clear exactly what methods are illegal, and then the judiciary will be in a better position to punish adequately and relentlessly those who insist on defying the clear legislative decrees. I do not believe any absolute private monopoly is justified, but if our great combinations are properly supervised, so that immoral practices are prevented, absolute monopoly will not come to pass, as the laws of competition and efficiency are against it.

The important thing is this, that under such Government recognition as we may give to that which is beneficent and wholesome in large business organizations we shall be most vigilant never to allow them to crystallize into a condition which shall make private initiative difficult. It is of the utmost importance that in the future we shall keep the broad path of opportunity just as open and easy for our children as it was for our fathers during the period which has been the glory of America's industrial history; that it shall be not only possible but easy for an ambitious man, whose character has so impressed itself upon his neighbors that they are willing to give him capital and credit to start in business for himself, and, if his superior efficiency deserves it, to triumph over the biggest organization that may happen to exist in his particular field. Whatever practices upon the part of large combinations may threaten to discourage such a man, or deny to him that which in the judgment of the community is a square deal should be specifically defined by the statutes as crimes. And in every case the individual corporation officer responsible for such unfair dealing should be punished.

We grudge no man a fortune which represents his own power and sagacity exercised with entire regard to the welfare of his fellows. We have only praise for the business man whose business success comes as an incident to doing good work for his fellows. But we should so shape conditions that a fortune shall be obtained only in honorable fashion, in such fashion that its gaining represents benefit to the community.

In a word, then, our fundamental purpose must be to secure genuine equality of opportunity. No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered. No watering of stocks should be permitted; and it can be prevented only by close governmental supervision of all stock issues so as to prevent overcapitalization.

We stand for the rights of property but we stand even more for the rights of man. We will protect the rights of the wealthy man, but we maintain that he holds his wealth subject to the general right of

the community to regulate its business use as the public welfare requires.

We also maintain that the Nation and the several States have the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good. It is our prime duty to shape the industrial and social forces so that they may tell for the material and moral upbuilding of the farmer and the wageworker, just as they should do in the case of the business man. You framers of this constitution be careful so to frame it that under it the people shall leave themselves free to do whatever is necessary in order to help the farmers of the State to get for themselves and their wives and children not only the benefits of better farming but also those of better business methods and better conditions of life on the farm.

Moreover, shape your constitutional action so that the people will be able, through their legislative bodies, or, failing that, by direct popular vote, to provide workmen's compensation acts, to regulate the hours of labor for children and for women, to provide for their safety while at work, and to prevent overwork or work under unhygienic or unsafe conditions. See to it that no restrictions are placed upon legislative powers that will prevent the enactment of laws under which your people can promote the general welfare, the common good. Thus only will the "general welfare" clause of our Constitution become a vital force for progress, instead of remaining a mere phrase. This also applies to the police powers of the Government. Make it perfectly clear that on every point of this kind it is your intention that the people shall decide for themselves how far the laws to achieve their purposes shall go, and that their decision shall be binding upon every citizen in the State, official or nonofficial, unless, of course, the Supreme Court of the Nation in any given case decides otherwise.

So much for the ends of government; and I have, of course, merely sketched in outline what the ends should be. Now for the machinery by which these ends are to be achieved; and here again, remember I only sketch in outline and do not for a moment pretend to work out in detail the methods of achieving your purposes. Let me at the outset urge upon you to remember that, while machinery is important, it is easy to overestimate its importance; and, moreover, that each community has the absolute right to determine for itself what that machinery shall be, subject only to the fundamental law of the Nation as expressed in the Constitution of the United States. Massachusetts has the right to have appointive judges who serve during good behavior, subject to removal, not by impeachment, but by simple majority vote of the two houses of the legislature whenever the representatives of the people feel that the needs of the people require such removal. New York has the right to have a long-term elective judiciary. Ohio has the right to have a short-term elective judiciary without the recall. California, Oregon, and Arizona have each and every one of them the right to have a short-term elective judiciary with the recall. Personally, of the four systems I prefer the Massachusetts one, if addition be made to it as I hereinafter indicate; but that is merely my preference; and neither I nor anyone else within or without public life has the right to impose his preference upon any community when the question is as to how that community

chooses to arrange for its executive, legislative, or judicial functions. But as you have invited me to address you here, I will give you my views as to the kind of governmental machinery which at this time and under existing social and industrial conditions it seems to me that, as a people, we need.

In the first place, I believe in the short ballot. You can not get good service from the public servant if you can not see him, and there is no more effective way of hiding him than by mixing him up with a multitude of others so that they are none of them important enough to catch the eye of the average, workaday citizen. The crook in public life is not ordinarily the man whom the people themselves elect directly to a highly important and responsible position. The type of boss who has made the name of politician odious rarely himself runs for high elective office; and if he does and is elected, the people have only themselves to blame. The professional politician and the professional lobbyist thrive most rankly under a system which provides a multitude of elective officers, of such divided responsibility and of such obscurity that the public knows, and can know, but little as to their duties and the way they perform them. The people have nothing whatever to fear from giving any public servant power so long as they retain their own power to hold him accountable for his use of the power they have delegated to him. You will get best service where you elect only a few men, and where each man has his definite duties and responsibilities, and is obliged to work in the open, so that the people know who he is and what he is doing, and have the information that will enable them to hold him to account for his stewardship.

I believe in providing for direct nominations by the people, including therein direct preferential primaries for the election of delegates to the national nominating conventions. Not as a matter of theory, but as a matter of plain and proved experience, we find that the convention system, while it often records the popular will, is also often used by adroit politicians as a method of thwarting the popular will. In other words, the existing machinery for nominations is cumbrous, and is not designed to secure the real expression of the popular desire. Now, as good citizens we are all of us willing to acquiesce cheerfully in a nomination secured by the expression of a majority of the people, but we do not like to acquiesce in a nomination secured by adroit political management in defeating the wish of the majority of the people.

I believe in the election of United States Senators by direct vote. Just as actual experience convinced our people that Presidents should be elected (as they now are in practice, although not in theory) by direct vote of the people instead of by indirect vote through an untrammeled electoral college, so actual experience has convinced us that Senators should be elected by direct vote of the people instead of indirectly through the various legislatures.

I believe in the initiative and the referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative. Here, again, I am concerned not with theories but with actual facts. If in any State the people are themselves satisfied with their present representative system, then it is of course their right to keep that system unchanged;

and it is nobody's business but theirs. But in actual practice it has been found in very many States that legislative bodies have not been responsive to the popular will. Therefore I believe that the State should provide for the possibility of direct popular action in order to make good such legislative failure. The power to invoke such direct action, both by initiative and by referendum, should be provided in such fashion as to prevent its being wantonly or too frequently used. I do not believe that it should be made the easy or ordinary way of taking action. In the great majority of cases it is far better that action on legislative matters should be taken by those specially delegated to perform the task; in other words, that the work should be done by the experts chosen to perform it. But where the men thus delegated fail to perform their duty, then it should be in the power of the people themselves to perform the duty. In a recent speech Gov. McGovern, of Wisconsin, has described the plan which has been there adopted. Under this plan the effort to obtain the law is first to be made through the legislature, the bill being pushed as far as it will go; so that the details of the proposed measure may be thrashed over in actual legislative debate. This gives opportunity to perfect it in form and invites public scrutiny. Then, if the legislature fails to enact it, it can be enacted by the people on their own initiative, taken at least four months before election. Moreover, where possible, the question actually to be voted on by the people should be made as simple as possible.

In short, I believe that the initiative and referendum should be used, not as substitutes for representative government, but as methods of making such government really representative. Action by the initiative or referendum ought not to be the normal way of legislation; but the power to take it should be provided in the constitution, so that if the representatives fail truly to represent the people on some matter of sufficient importance to rouse popular interest, then the people shall have in their hands the facilities to make good the failure. And I urge you not to try to put constitutional fetters on the legislature, as so many constitution makers have recently done. Such action on your part would invite the courts to render nugatory every legislative act to better social conditions. Give the legislature an entirely free hand; and then provide by the initiative and referendum that the people shall have power to reverse or supplement the work of the legislature should it ever become necessary.

As to the recall, I do not believe that there is any great necessity for it as regards short-term elective officers. On abstract grounds I was originally inclined to be hostile to it. I know of one case where it was actually used with mischievous results. On the other hand, in three cases in municipalities on the Pacific coast which have come to my knowledge it was used with excellent results. I believe it should be generally provided, but with such restrictions as will make it available only when there is a widespread and genuine public feeling among a majority of the voters,

There remains the question of the recall of judges. One of the ablest jurists in the United States, a veteran in service to the people, recently wrote me as follows on this subject:

> There are two causes of the agitation for the recall as applied to judges. First, the administration of justice has withdrawn from life and become artificial and technical. The recall is not so much a recall of judges from office

as it is a recall of the administration of justice back to life, so that it shall become, as it ought to be, the most efficient of all agencies for making this earth a better place to live in. Judges have set their rules above life. Like the Pharisees of old, they have said, "The people be accursed, they know not the law" (that is our "rule"). Courts have repeatedly defeated the aroused moral sentiment of a whole commonwealth. Take the example of the St. Louis boodlers. Their guilt was plain, and in the main confessed. The whole State was aroused and outraged. By an instinct that goes to the very foundation of all social order they demaded that the guilty be punished. The boodlers were convicted, but the Supreme Court of Missouri, never questioning their guilt, set their conviction aside upon purely technical grounds. The same thing occurred in California. Nero, fiddling over burning Rome, was a patriot and a statesman in comparison with judges who thus trifle with and frustrate the aroused moral sentiment of a great people, for that sentiment is politically the vital breath of both State and Nation. It is to recall the administration of justice back from such practices that the recent agitation has arisen.

Second, by the abuse of the power to declare laws unconstitutional the courts have become a lawmaking instead of a law-enforcing agency. Here again the settled will of society to correct confessed evils has been set at naught by those who place metaphysics above life. It is the courts, not the constitutions, that are at fault. It is only by the process which James Russell Lowell, when answering the critics of Lincoln, called "pettifogging the constitution" that constitutions which were designed to protect society can thus be made to defeat the common good. Here again the recall is a recall of the administration of justice back from academical refinement to social service.

An independent and upright judiciary which fearlessly stands for the right, even against popular clamor, but which also understands and sympathizes with popular needs, is a great asset of popular government. There is no public servant and no private man whom I place above a judge of the best type, and very few whom I rank beside him. I believe in the cumulative value of the law and in its value as an impersonal, disinterested basis of control. I believe in the necessity for the courts' interpretation of the law as law without the power to change the law or to substitute some other thing than law for it. But I agree with every great jurist, from Marshall downward, when I say that every judge is bound to consider two separate elements in his decision of a case, one the terms of the law, and the other the conditions of actual life to which the law is to be applied. Only by taking both of these elements into account is it possible to apply the law as its spirit and intent demand that it be applied. Both law and life are to be considered in order that the law and the Constitution shall become, in John Marshall's word, "a living instrument and not a dead letter." Justice between man and man, between the State and its citizens, is a living thing, whereas legalistic justice is a dead thing. Moreover, never forget that the judge is just as much the servant of the people as any other official. Of course, he must act conscientiously. So must every other official. He must not do anything wrong because there is popular clamor for it any more than under similar circumstances a governor or a legislator or a public utilities commissioner should do wrong. Each must follow his conscience, even though to do so costs him his place. But in their turn the people must follow their conscience, and when they have definitely decided on a given policy they must have public servants who will carry out that policy.

Keep clearly in mind the distinction between the end and the means to attain that end. Our aim is to get the type of judge that I have described, to keep him on the bench as long as possible, and to keep off the bench and, if necessary, take off the bench the wrong type

of judge. In some communities one method may work well which in other communities does not work well, and each community should adopt and preserve or reject a given method according to its practical working. Therefore the question of applying the recall in any shape is one of expediency merely. Each community has a right to try the experiment for itself in whatever shape it pleases. Under the conditions set forth in the extract from the letter given above, I would personally have favored the recall of the judges both in California and in Missouri, for no damage that could have been done by the recall would have equaled the damage done to the community by judges whose conduct had revolted not only the spirit of justice, but the spirit of common sense. I do not believe in adopting the recall save as a last resort, when it has become clearly evident that no other course will achieve the desired result. But either the recall will have to be adopted or else it will have to be made much easier than it now is to get rid, not merely of a bad judge, but of a judge who, however virtuous, has grown so out of touch with social needs and facts that he is unfit longer to render good service on the bench. It is nonsense to say that impeachment meets the difficulty. In actual practice we have found that impeachment does not work, that unfit judges stay on the bench in spite of it, and indeed because of the fact that impeachment is the only remedy that can be used against them. Where such is the actual fact it is idle to discuss the theory of the case. Impeachment as a remedy for the ills of which the people justly complain is a complete failure. A quicker, a more summary, remedy is needed; some remedy at least as summary and as drastic as that embodied in the Massachusetts constitution. And whenever it be found in actual practice that such remedy does not give the needed results, I would unhesitatingly adopt the recall.

But there is one kind of recall in which I very earnestly believe, and the immediate adoption of which I urge. There are sound reasons for being cautious about the recall of a good judge who has rendered an unwise and improper decision. Every public servant, no matter how valuable, and not omitting Washington or Lincoln or Marshall, at times makes mistakes. Therefore we should be cautious about recalling the judge, and we should be cautious about interfering in any way with the judge in decisions which he makes in the ordinary course as between individuals. But when a judge decides a constitutional question, when he decides what the people as a whole can or cannot do, the people should have the right to recall that decision if they think it wrong. We should hold the judiciary in all respect; but it is both absurd and degrading to make a fetish of a judge or of anyone else. Abraham Lincoln said, in his first inaugural:

> If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, * * * the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is there in this view any assault upon the courts or the judges.

Lincoln actually applied in successful fashion the principle of the recall in the Dred Scott case. He denounced the Supreme Court for that iniquitous decision in language much stronger than I have ever used in criticizing any court, and appealed to the people to recall the

decision—the word "recall" in this connection was not then known, but the phrase exactly describes what he advocated. He was successful, the people took his view, and the decision was practically recalled. It became a dead letter without the need of any constitutional amendment. In any contest to-day where the people stand for justice and the courts do not, the man who supports the courts against the people is untrue to the memory of Lincoln, and shows that he is the spiritual heir, not of the men who followed and supported Lincoln, but of the Cotton Whigs who supported Chief Justice Taney and denounced Lincoln for attacking the courts and the Constitution.

Under our Federal system the remedy for a wrong such as Abraham Lincoln described is difficult. But the remedy is not difficult in a State. What the Supreme Court of the Nation decides to be law binds both the national and the State courts and all the people within the boundaries of the Nation. But the decision of a State court on a constitutional question should be subject to revision by the people of the State. Again and again in the past justice has been scandalously obstructed by State courts declaring State laws in conflict with the Federal Constitution, although the Supreme Court of the Nation had never so decided or had even decided in a contrary sense. When the supreme court of the State declares a given statute unconstitutional because in conflict with the State or the National Constitution, its opinion should be subject to revision by the people themselves. Such an opinion ought always to be treated with great respect by the people, and unquestionably in the majority of cases would be accepted and followed by them. But actual experience has shown the vital need of the people reserving to themselves the right to pass upon such opinion. If any considerable number of the people feel that the decision is in defiance of justice, they should be given the right by petition to bring before the voters at same subsequent election, special or otherwise, as might be decided, and after the fullest opportunity for deliberation and debate, the question whether or not the judges' interpretation of the Constitution is to be sustained. If it is sustained, well and good. If not, then the popular verdict is to be accepted as final, the decision is to be treated as reversed, and the construction of the Constitution definitely decided—subject only to action by the Supreme Court of the United States.

Many eminent lawyers who mare or less frankly disbelieve in our entire American system of government for, by, and of the people, violently antagonize this proposal. They believe, and sometimes assert, that the American people are not fitted for popular government, and that it is necessary to keep the judiciary "independent of the majority or of all the people"; that there must be no appeal to the people from the decision of a court in any case; and that therefore the judges are to be established as sovereign rulers over the people. I take absolute issue with all those who hold such a position. I regard it as a complete negation of our whole system of government; and if it became the dominant position in this country, it would mean the absolute upsetting of both the rights and the rule of the people. If the American people are not fit for popular government, and if they should of right be the servants and not the masters of the men whom they themselves put in office, then Lincoln's work

was wasted and the whole system of government upon which this great democratic Republic rests is a failure. I believe, on the contrary, with all my heart, that the American people are fit for complete self-government, and that, in spite of all our failings and shortcomings, we of this Republic have more nearly realized than any other people on earth the ideal of justice attained through genuine popular rule. The position which these eminent lawyers take and applaud is of necessity a condemnation of Lincoln's whole life; for his great public career began and was throughout conditioned by his insistence in the Dred Scott case, upon the fact that the American people were the masters and not the servants of even the highest court in the land, and were thereby the final interpreters of the Constitution. If the courts have the final say so on all legislative acts, and if no appeal can lie from them to the people, then they are the irresponsible masters of the people. The only tenable excuse for such a position is the frank avowal that the people lack sufficient intelligence and morality to be fit to govern themselves. In other words, those who take this position hold that the people have enough intelligence to frame and adopt a constitution, but not enough intelligence to apply and interpret the Constitution which they have themselves made. Those who take this position hold that the people are competent to choose officials to whom they delegate certain powers, but not competent to hold these officials responsible for the way they exercise these powers.

Now the power to interpret is the power to establish; and, if the people are not to be allowed finally to interpret the fundamental law, ours is not a popular government. The true view is that legislators and judges alike are the servants of the people, who have been created by the people just as the people have created the Constitution; and they hold only such power as the people have for the time being delegated to them. If these two sets of public servants disagree as to the amounts of power respectively delegated to them by the people under the Constitution, and if the case is of sufficient importance, then, as a matter of course, it should be the right of the people themselves to decide between them.

I do not say that the people are infallible. But I do say that our whole history shows that the American people are more often sound in their decisions than is the case with any of the governmental bodies to whom, for their convenience, they have delegated portions of their power. If this is not so, then there is no justification for the existence of our Government; and if it is so, then there is no justification for refusing to give the people the real, and not merely the nominal, ultimate decision on questions of constitutional law. Just as the people, and not the Supreme Court under Chief Justice Taney, were wise in their decisions of the vital questions of their day, so I hold that now the American people as a whole have shown themselves wiser than the courts in the way they have approached and dealt with such vital questions of our day as those concerning the proper control of big corporations and of securing their rights to industrial workers.

Here I am not dealing with theories; I am dealing with actual facts. In New York, in Illinois, in Connecticut, lamentable injustice has been perpetuated, often for many years, by decisions

of the State courts refusing to permit the people of the States to exercise their right as a free people to do their duty as a conscientious people in removing grave wrong and social injustice. These foolish and iniquitous decisions have almost always been rendered at the expense of the weak; they have almost always been the means of putting a stop to the effort to remove burdens from wageworkers, to secure to men who toil on the farm and on the railway, or in the factory, better and safer conditions of labor and of life. Often the judges who have rendered these decisions have been entirely well-meaning men, who, however, did not know life as they knew law, and who championed some outworn political philosophy which they assumed to impose on the people. Their associations and surroundings were such that they had no conception of the cruelty and wrong their decisions caused and perpetuated. Their prime concern was with the empty ceremonial of perfunctory legalism, and not with the living spirit of justice. A typical case was the decision rendered but a few months ago by the court of appeals of my own State, the State of New York, declaring unconstitutional the workmen's compensation act. In their decision the judges admitted the wrong and the suffering caused by the practices against which the law was aimed. They admitted that other civilized nations had abolished these wrongs and practices. But they took the ground that the Constitution of the United States, instead of being an instrument to secure justice, had been ingeniously devised absolutely to prevent justice. They insisted that the clause in the Constitution which forbade the taking of property without due process of law forbade the effort which had been made in the law to distribute among all the partners in an enterprise the effects of the injuries to life or limb of a wageworker. In other words, they insisted that the Constitution had permanently cursed our people with impotence to right wrong, and had perpetuated a cruel iniquity; for cruel iniquity is not too harsh a term to use in describing the law which, in the event of such an accident, binds the whole burden of crippling disaster on the shoulders least able to bear it—the shoulders of the crippled man himself, or of the dead man's helpless wife and children. No anarchist orator, raving against the Constitution, ever framed an indictment of it so severe as these worthy and well-meaning judges must be held to have framed if their reasoning be accepted as true. But, as a matter of fact, their reasoning was unsound, and was as repugnant to every sound defender of the Constitution as to every believer in justice and righteousness. In effect, their decision was that we could not remedy these wrongs unless we amended the Constitution (not the constitution of the State, but the Constitution of the Nation) by saying that property could be taken without due process of law! It seems incredible that anyone should be willing to take such a position. It is a position that has been condemned over and over again by the wisest and most far-seeing courts. In its essence it was reversed by the decision of State courts in States like Washington and Iowa, and by the Supreme Court of the Nation in a case but a few weeks old.

I call this decision to the attention of those who shake their heads at the proposal to trust the people to decide for themselves what their own governmental policy shall be in these matters. I know of no popular vote by any State of the Union more flagrant in its de-

fiance of right and justice, more shortsighted in its inability to face the changed needs of our civilization, than this decision by the highest court of the State of New York. Many of the judges of that court I know personally, and for them I have a profound regard. Even for as flagrant a decision as this I would not vote for their recall; for I have no doubt the decision was rendered in accordance with their ideas of duty. But most emphatically I do wish that the people should have the right to recall the decision itself, and authoritatively to stamp with disapproval what can not but seem to the ordinary plain citizen a monstrous misconstruction of the Constitution, a monstrous perversion of the Constitution into an instrument for the perpetuation of social and industrial wrong and for the appression of the weak and helpless. No ordinary amendment to the Constitution would meet this type of case; and intolerable delay and injustice would be caused by the effort to get such amendment—not to mention the fact that the very judges who are at fault would proceed to construe the amendment. In such a case the fault is not with the Constitution; the fault is in the judges' construction of the Constitution; and what is required is power for the people to reverse this false and wrong construction.

I wish I could make you visualize to yourselves what these decisions against which I so vehemently protest really represent of suffering and injustice. I wish I had the power to bring before you the man maimed or dead, the woman and children left to struggle against bitter poverty because the breadwinner has gone. I am not thinking of the terminology of the decision, nor of what seem to me the hair-splitting and meticulous arguments elaborately worked out to justify a great and a terrible miscarriage of justice. Moreover, I am not thinking only of the sufferers in any given case, but of the tens of thousands of others who suffer because of the way this case is decided. In the New York case the railway employee who was injured was a man named, I believe, Ives. The court admits that by every moral consideration he was entitled to recover as his due the money that the law intended to give him. Yet the court by its decision forces that man to stagger through life maimed, and keeps the money that should be his in the treasury of the company in whose service, as an incident of his regular employment and in the endurance of ordinary risks, he lost the ability to earn his own livelihood. There are thousands of Iveses in this country; thousands of cases such as this come up every year; and while this is true, while the courts deny essential and elementary justice to these men and give to them and the people in exchange for justice a technical and empty formula, it is idle to ask me not to criticize them. As long as injustice is kept thus intrenched by any court, I will protest as strongly as in me lies against such action. Remember, when I am asking the people themselves in the last resort to interpret the law which they themselves have made, that after all I am only asking that they step in and authoritatively reconcile the conflicting decisions of the courts. In all these cases the judges and courts have decided every which way, and it is foolish to talk of the sanctity of a judge-made law which half of the judges strongly denounce. If there must be decision by a close majority, then let the people step in and let it be their majority that decides.

According to one of the highest judges then and now on the Supreme Court of the Nation, we had lived for a hundred years under a Constitution which permitted a national income tax, until suddenly by one vote the Supreme Court reversed its previous decisions for a century and said that for a century we had been living under wrong interpretation of the Constitution (that is, under a wrong Constitution), and therefore in effect established a new Constitution which we are now laboriously trying to amend, so as to get it back to be the Constitution that for a hundred years everybody, including the Supreme Court, thought it to be. When I was President we passed a national workmen's compensation act. Under it a railway man named Howard, I think, was killed in Tennessee, and his widow sued for damages. Congress had done all it could to provide the right, but the court stepped in and decreed that Congress had failed. Three of the judges took the extreme position that there was no way in which Congress could act to secure the helpless widow and children against suffering, and that the man's blood and the blood of all similar men when spilled should forever cry aloud in vain for justice. This seems a strong statement, but it is far less strong than the actual facts; and I have difficulty in making the statement with any degree of moderation. The nine Justices of the Supreme Court on this question split into five fragments. One man, Justice Moody, in his opinion stated the case in its broadest way and demanded justice for Howard, on grounds that would have meant that in all similar cases thereafter justice and not injustice should be done. Yet the court, by a majority of one, decided as I do not for one moment believe the court would now decide, and not only perpetuated a lamentable injustice in the case of the man himself, but set a standard of injustice for all similar cases. Here again I ask you not to think of the mere legal formalism, but to think of the great immutable principles of justice, the great immutable principles of right and wrong, and to ponder what it means to men dependent for their livelihood, and to the women and children dependent upon these men, when the courts of the land deny them the justice to which they are entitled.

Now, gentlemen, in closing, and in thanking you for your courtesy, let me add one word. Keep clearly in view what are the fundamental ends of government. Remember that methods are merely the machinery by which these ends are to be achieved. I hope that not only you and I but all our people may ever remember that while good laws are necessary, while it is necessary to have the right kind of governmental machinery, yet that the all-important matter is to have the right kind of man behind the law. A State can not rise without proper laws, but the best laws that the wit of man can devise will amount to nothing if the State does not contain the right kind of man, the right kind of woman. A good constitution, and good laws under the constitution, and fearless and upright officials to administer the laws—all these are necessary; but the prime requisite in our national life is, and must always be, the possession by the average citizen of the right kind of character. Our aim must be the moralization of the individual, of the government, of the people as a whole. We desire the moralization not only of a political conditions but of industrial conditions, so that every force in the community, individual and col-

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MR. ROOSEVELT'S LETTER TO THE GOVERNORS.

NEW YORK, *February 24, 1912.*

GENTLEMEN: I deeply appreciate your letter, and I realize to the full the heavy responsibility it puts upon me, expressing as it does the carefully considered convictions of the men elected by popular vote to stand as the heads of government in their several States.

I absolutely agree with you that this matter is not one to be decided with any reference to the personal preferences or interests of any man, but purely from the standpoint of the interests of the people as a whole. I will accept the nomination for President if it is tendered to me, and I will adhere to this decision until the convention has expressed its preference.

One of the chief principles for which I have stood, and for which I now stand, and which I have always endeavored and always shall endeavor to reduce to action, is the genuine rule of the people; and therefore I hope that so far as possible the people may be given the chance, through direct primaries, to express their preference as to who shall be the nominee of the Republican presidential convention.

Very truly, yours,

THEODORE ROOSEVELT.

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